UNITED STATES OF AMERICA Before the COMMODITY FUTURES TRADING COMMISSION

ERNEST L. WADE

v.

MARCUS CHEVALIER, JOSEPH GEORGE DURDACK, and KJW, LLC d/b/a/ KEN WOLF COMMODITIES CFTC Docket No. 06-18039 D 4: 20

ORDER

Pursuant to Commission Rule 12.403, we hereby take *sua sponte* review of the Administrative Law Judge's ("ALJ") two orders dated January 23, 2007 and February 13, 2007. We take this step of *sua sponte* review in this reparations matter to determine whether the ALJ abused his discretion.

According to the ALJ's January 23, 2007 order, the response filed by complainant Ernest L. Wade ("Wade") to the ALJ's pre-hearing order lacked sufficient detail. Rule 12.312(a) sets forth pre-hearing requirements such as a statement of issues, identification of witnesses, and a summary of the testimony of the witnesses. As a sanction against Wade, the ALJ dismissed Joseph George Durdack ("Durdack") as a respondent. The ALJ also found respondent Marcus Chevalier's ("Chevalier") response to his pre-hearing order inadequate and sanctioned Chevalier by precluding him from presenting any evidence at the hearing.

The ALJ's February 13, 2007 order dismissing the entire proceeding came after Wade submitted a letter dated February 12, 2007 stating that he was "withdraw[ing]" his complaint. The ALJ's February 13 order states: "Given Wade's choice to cease the prosecution of his case,

¹ Under Rule 12.21(a), a voluntary dismissal requires a stipulation by all parties. The record of this case does not contain a stipulation.

we **DISMISS** the complaint with prejudice to Wade's right to seek redress in any forum." (Emphasis in the original.) Rule 12.21(b), which is applicable to a voluntary dismissal of a reparations proceeding, states:

A dismissal of a complaint pursuant to this paragraph shall be with prejudice to complainant's right to re-file a claim in reparations based upon the same set of facts as alleged in the dismissed complaint. Unless otherwise stated in the stipulation, a dismissal ordered pursuant to this paragraph shall be regarded by the Commission as without prejudice to the parties' right to seek redress in such alternative forums as may be available for adjudication of their claims.

We take review to determine whether dismissal of Durdack and preclusion of Chevalier's evidence was warranted and whether the ALJ's order dismissing the proceeding with regard to other forums was appropriate. An order setting forth a briefing schedule will be forthcoming.

Accordingly, this case is stayed until further notice.

IT IS SO ORDERED.

By the Commission (Chairman JEFFERY and Commissioners LUKKEN and DUNN).

Fileen A Donovan

Acting Secretary of the Commission

Commodity Futures Trading Commission

Dated:

March 15, 2007